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ethics.committee@akleg.govCOMMITTEE
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JOYCE ANDERSON,
ADMINISTRATOR
269-0150LINDA LEIGH,
ADMINISTRATIVE ASSISTANT
269-8179

FAX (907) 269-0152

Ethics Committee issues two Advisory Opinions

August 21, 2013

Advisory Opinion [13-02](#)

The Advisory Opinion defines board membership on an organization under AS 24.60.030(f). The Legislative Ethics Act does not define "organization", "board of an organization" or "board membership". The committee adopted the common-sense approach of the Alaska Supreme Court in interpreting the statutory terms.

In the context AS 24.60.030(f):

"**organization**" means a group of people united for a common purpose, such as an association, or a structure for doing business, such as a corporation.

"**board**" means a group of persons having managerial, supervisory, investigatory, or advisory powers.

"**member**" means one of the individuals comprising a group.

"**membership**" means the state or status of being a member.

"**board of an organization**" means a board that has power to manage, supervise, investigate, or advise an administrative and functional structure, such as a business, or a group of people united by a common purpose, such as an association or society.

Therefore, the committee defined "**board membership**" (combining the commonly understood meanings of "board," "member," and "membership,") to mean "an individual who is one of the individuals composing a group of persons having managerial, supervisory, investigatory, or advisory powers."

The committee notes AS 24.60.030(f) directs broad disclosure and does not contain exceptions for or distinguish between non-profit and for-profit organizations, governmental and non-governmental organizations, or religious and non-religious organization.

INSIDE THIS ISSUE:

Advisory Opinion 13-02	Cover
Advisory Opinion 13-03	2
Disclosure Form: Request to Refrain from Making an Ethics Disclosure	3

IMPORTANT: Board memberships that did not require filing a disclosure before—but do now based on the recent clarification of what constitutes a board membership—will not be considered late if filed by [Friday, September 13, 2013](#).

Please contact the Ethics Office if you are unsure if a board membership meets the criteria outlined in [AO 13-02](#).

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LEGISLATIVE ETHICS**Address:****716 W. 4th Ave., #230****P. O. Box 101468****Anchorage, AK 99501****We're on the web!**<http://ethics.legis.state.ak.us>Advisory Opinion [13-03](#)**Does the Legislative Ethics Act permit a legislator to use the United States Postal Service Every Door Direct Mail service (EDDM) to deliver a legislator's legislative newsletter? Yes, with limitations.**

Background on EDDM: When using EDDM, mail is delivered to every address within the zip code area(s) or carrier route(s) selected and a flat rate is charged. The boundaries of a legislative district most likely will differ from the boundaries of the areas selected for delivery of a legislative newsletter via EDDM. The USPS will not divide routes when delivering mail by EDDM. Therefore, when using EDDM, newsletters may be delivered to addresses within a legislative district and to addresses outside of a legislative district. The flat rate for using EDDM to deliver newsletters in bulk is less than USPS rates for delivery solely to addresses within a legislative district.



Advisory Opinion Discussion: AS 24.60.030(a)(2) prohibits the use of legislative assets and resources for the private benefit of any person, with some specific exceptions. Distribution of legislative newsletters with EDDM confers a private benefit to a legislator if newsletters are produced with legislative resources. Conversely, using private funds to pay for distribution of a legislative newsletter to persons other than a legislator's constituents may still violate the prohibition on private use under AS 24.60.030(a)(2) if the legislator uses legislative resources or assets to produce the newsletter. The private benefit may be added name recognition and the association of the legislator's name with information and accomplishments, by individuals who are not constituents but who may become, as a result of the newsletter, more likely to support the legislator's political or policy goals.

Exception (A), under AS 24.60.030(a)(2), may allow a legislator limited personal use of legislative assets or resources to distribute a copy of a legislative newsletter to a limited number of persons that are not among the legislator's constituents; however, the committee would consider each set of facts independently. Depending on the content and distribution of a particular newsletter, the committee may find that distribution of a legislative newsletter to every address in a zip code area may be permissible if the number of addresses outside of the legislator's election district is **limited** but the larger that number becomes the greater the risk that the committee will determine that the limited use exception does not apply. An instance where a legislator distributes a legislative newsletter to recipients who are outside of the legislator's district may well be problematic if it is foreseeable that those recipients could vote in an election in which that legislator is running, or may run, for elective office.

While exception (E) allows the use of legislative employees to prepare and send out seasonal greeting cards, and does not express a limitation on where or to who the cards can be sent., under exception (J), a legislator is permitted to use legislative assets and resources to send legislative newsletters **"to the legislator's constituents."**

For the purposes of interpreting AS 24.60.030(a)(2)(J), the committee defined "**constituent**" to mean a natural person residing within a legislator's district and includes natural persons who are legally residents of a legislator's district but are temporarily living elsewhere.

Please read both Advisory Opinions as they contain details explaining the rationale for the Ethics Committee's interpretation of the statutes applicable to the question asked.

Please contact the Ethics Office if you have a fact-specific scenario that needs clarification.

AUGUST 2013, 2ND EDITION

**On August 21, 2013, the Ethics Committee
approved a Disclosure Form:**

Request to Refrain from Making an Ethics Disclosure - AS 24.60.105(d)

A person covered by the Act may make a written request to refrain from making a disclosure if the disclosure would violate state or federal law, including the United States Constitution and the Constitution of the State of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow.

The person shall provide the committee with justification in writing.

The committee shall approve or deny the request, or require further justification. EXAMPLE: A legislator or legisla-

tive employee provides medical services to a person and is paid directly by the client, although they may be eligible for reimbursement through a medical insurance benefit in some instances. Because of the financial relationship, a “close economic association” disclosure may be required under AS 24.60.070. However, under federal and state law, including the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the legislator or legislative employee is required to keep certain information relating to the services confidential. The legislator or legislative employee may submit a written

request to the committee outlining the reason to refrain from disclosing the association.

**See Advisory Opinions [94-07](#),
Violent Crimes Compensation
Board, and [09-02](#), HIPAA.**

**[Request to Refrain
Disclosure Form](#)**

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